



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 483

IN THE MATTER OF WAYNE NEWTON

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Wayne Newton ("Newton") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 9, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Newton. The Commission has concluded its inquiry and, on March 30, 1994, found reasonable cause to believe that Newton violated G.L. c. 268A.

The Commission and Newton now agree to the following findings of fact and conclusions of law:

1. Newton was, during the time relevant, the Fire Chief of the Town of Royalston. As such, Newton was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. The selectmen annually appoint the fire chief.
3. In early 1992, the Board of Health ("BOH") condemned an apartment building at 1 School Street. In early April 1992, a fire occurred at the property. Newton, as fire chief, sought bids from local contractors to board-up the building to prevent further acts of arson.
4. Newton told contractors to submit bids to board-up the School Street building using at least 1/2" plywood. One contractor submitted an April 16, 1992 written bid of \$1,800 using the specified 1/2" plywood.
5. Newton also solicited a bid from Selectman John Kirkman. Kirkman worked for Newton between 1986 and 1991. [Newton subcontracts carpentry work to Kirkman.] Kirkman submitted an April 17, 1992 written bid of \$1,700 using 3/8" plywood.
6. There was approximately a \$350 price difference between the 1/2" (\$875) and the 3/8" (\$519) plywood sheets. Although Kirkman's bid was based on thinner and less expensive plywood than specified, Kirkman was awarded the contract. Newton, with the concurrence of the BOH, awarded the job to Kirkman.
7. Newton allowed Kirkman to charge the plywood at the local lumber yard on the fire department account. Additionally, Newton allowed Kirkman to use his (Newton's) personal equipment (a generator and compressor) to perform the job.
8. After the job was completed, Kirkman billed the town for the entire contract amount of \$1,700, although the plywood had been charged to the fire department. The BOH withheld payment because they wanted an explanation as to why Kirkman had used the 3/8" plywood and charged the materials to the fire department account. In response to the BOH's concern, Kirkman adjusted the bill to reflect the price difference in the thickness of the plywood.
9. The BOH eventually approved paying Kirkman \$1,450 for the School Street job (i.e., it reduced his bill by an

amount equal to the price difference between the 3/8" and 1/2" plywood).

10. Newton contends that he did not realize that Kirkman's written bid used 3/8" rather than 1/2" plywood. Additionally, Newton states that he did not provide any preferential treatment to Kirkman and that he would have let any other contractor charge the building materials on the fire department account.

11. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person knowing all of the facts to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.^{1/}

12. Newton, by participating in the award of the School Street contract to Kirkman, whose bid used 3/8" plywood while other contractors were required to use 1/2" plywood, and subsequently allowing Kirkman to charge building materials on the fire department account and use his (Newton's) personal tools on the job, created the appearance that Kirkman received the contract in part because Kirkman, as a selectman, annually appoints Newton to his fire chief position. This appearance is further exacerbated by the fact that Kirkman and Newton had a past and ongoing business relationship. Therefore, Newton's actions under these circumstances would cause a reasonable person knowing all of the relevant factors to conclude that Kirkman could unduly enjoy Newton's favor in the performance of his official duties. Consequently, Newton violated §23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Newton, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Newton:

- (1) that Newton pay to the Commission the sum of two hundred and fifty dollars (\$250.00) as a civil penalty for the violation of G.L. c. 268A, §23(b)(3); and
- (2) that Newton waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: April 5, 1994

^{1/} Section 23(b)(3) goes on to provide that "it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion."